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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,534	12/12/2003	Joseph C. Walsh	R0291940.2	2689
26158	7590	01/21/2005	EXAMINER	
WOMBLE CARLYLE SANDRIDGE & RICE, PLLC			FOSTER, JIMMY G	
P.O. BOX 7037			ART UNIT	
ATLANTA, GA 30357-0037			PAPER NUMBER	

3728

DATE MAILED: 01/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/735,534

Applicant(s)

WALSH ET AL.

Examiner

Jimmy G Foster

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-29 and 31-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26-29 and 31-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1) Election of the invention of claims 26-29 and 31-46 is acknowledged.

It is noted that Applicant has canceled the claims to the non-elected invention.

2) Claims 35-42 are finally rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In claim 35, the limitation, "wherein at least one of the hot melt glue strips connects the left front panel to the back spine" is considered to be new matter since the hot melt glue strips 1080, 1086, 1088 actually connect the back spine panel to the front spine panel. Applicant's Figure 24 appears to be improperly labeled by indicating that the panel with said glue strips is the one with the reference numeral "228". Although the reference numeral 228 refers to the left front panel in the description, Figure 24 shows this reference numeral as being designated for the panel which has been folded over. However, if this is compared to Figure 9, it is evident that the left front panel has not been folded over, but the front spine panel 240 is the panel which has been folded over. Accordingly, the left front panel is actually under the panel (the front spine panel 240) which has been folded over. Therefore, the glue strips, mentioned above, are available for only connecting the front spine panel 240 (which is wrongly designated in Figure 24 as "228") to the back spine panel 242.

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3) Claims 35-42, if read as incorrectly written, distinguish over the prior art since the prior art does not show a back spine attached by hot melt glue to a left front panel. However, since it appears that Applicant's claim 35 is attempting to claim what is shown in Figure 24, claims 35-42 will be rejected as indicated below in order to expedite prosecution.

4) Claims 45 and 46 are finally rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 45 there is no antecedent basis for "the adhesive strips" and it is unclear how the adhesive strips relate to the glue strips.

5) The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6) Claims 26, 27, 29, 31-39 and 42 are finally rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Forrer et al (3,572,543). Applicants' use of the claim term "half," when considered in light of the specification, in which the portions of the carrier on either side of the spine fold (D) are described as halves, is not considered to require that the halves claimed be identical since the portions of the carrier embodiments disclosed are not identical.

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In the reference of Forrer et al, there is provided a first half defined by panels 8,2,1,3,10 and a second half defined by panels 35,39,41,40,36. The halves are separated by a spine fold/medial fold line 29. More specifically, a front panel is defined by panel 1, a left front panel (as not erected) is defined by panel 2, a right front panel is defined by the panel 3, a back panel is defined by the panel 41, a left back panel is defined by the panel 39, and a right front panel is defined by the panel 40.

In Figure 5 each of panels 8, 10, 35 and 36 has adhesive applied to its surface in a manner indicated by the stippling shown, which in each case is in the form of a strip whose line is extended transverse to the spine fold 29. There are also adhesive strips on panel 50 and flap 6, which are parallel to the spine fold 29.

In addition, the adhesive located on the surface of panel 35 and portion of the surface of panel 27, as shown in Figure 4, is asserted by the examiner (1) as being on an adhesive line transverse to the spine fold 29, (2) as including the portion thereof on panel 27 which will attach the panels 12 and 27 of the halves together, and (3) as including a portion on the surface of panel 35 (as seen in Figure 4) which will attach first-half portion/panel 35 to the first-half portion/panel 27. See the description in the first paragraph of column 3.

Additionally, the reference of Forrer et al discloses that the glue used in constructing the carrier may be hot-melt adhesive, for the purpose of using an adhesive that does not cause moisture to enter the paperboard and weaken the paperboard (col. 4, lines 52-59).

Regarding Applicant's claim 35, the left front panel is alternatively defined by the combination of the panel 8 and the panel 2, and the back spine

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is defined by the panel 35. Accordingly, Applicant's claimed invention does not distinguish over the subject matter of Forrer et al.

Moreover, the glue strips on the right front glue flap 10 and the right back glue flap 36 connect them together. Additionally, the glue strip on the handle reinforcing panel 12 connects it to the handle panel 16.

7) The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8) Claims 28, 40, 41 and 43-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forrer et al (described above) in view of Applicants' admission of prior art, regarding prior art Figure 9, with respect to it being known to make a package with *panel graphics* on the front and back halves of a carrier and with respect to it being known to provide glue strips/adhesive strips (e.g. 460,462,486,492) along an edge of the graphic (204,206). This may be provided with a film laminate, in a known manner, on one side of the blank substrate so as to provide superb graphics (the paragraph beginning on line 8 of page 1 of the specification). The prior art graphics are known to provide "marketing", directions or other information (page 4, lines 16-19). Accordingly, it would have been obvious in view of this to have made the front and back halves with such graphics on a film laminate of the blank, including with an edge along which the glue strips of

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panels 8, 10, 35 and 36 extend, for providing marketing, directions or other information on the carrier.

9) However, if "adhesive" is changed to "hot melt glue" in claim 45, the claims 45 and 46, insofar as they have been specifically claimed, would be allowable. An after-final amendment solely making this change would be entered.

10) Applicant's arguments filed 09 November 2004 have been fully considered but they are not deemed to be persuasive. The disclosure of Forrer et al, regarding the use of hot melt adhesive as the glue for the carrier (col. 4, lines 52-56), is considered to anticipate Applicant's claimed limitation regarding hot melt glue strips being transverse to the spine fold line, which adhere the first and second halves. The disclosure of this would clearly refer to the glue strips on panels 8, 10, 35 and 36 (Forrer et al). Accordingly, Applicant's arguments regarding obviousness are not persuasive.

11) Applicant's amendment necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R.

§ 1.136(a).

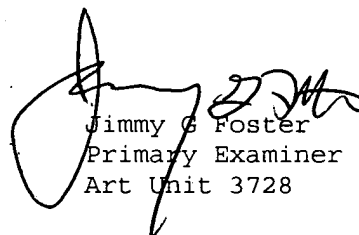
A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

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12) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jimmy G Foster whose telephone number is (571) 272-4554. The examiner can normally be reached on Mon-Fri, 8:45 am - 5:15 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.



Jimmy G Foster
Primary Examiner
Art Unit 3728

JGF
19 January 2005